

82-956

No. A-264

Office-Supreme Court, U.S.

FILED

NOV 23 1982

ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1982

JANICE HAYES,

Petitioner,

vs.

VALLEY BANK OF NEVADA, et al.,

Respondents.

On Petition For A Writ Of Certiorari To the United
States Court of Appeals For The Ninth Circuit

NOTICE OF MOTION FILED IN UNITED STATES COURT OF
APPEALS FOR CORRECTION OF CLERICAL MISTAKE NUNC
PRO TUNC IN MEMORANDUM ENTERED JUNE 21, 1982

JANICE HAYES, ESQ.
3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135

Petitioner

(Petitioner has not been a member
of the Bar of Nevada for a
sufficient length of time to be
admitted to the Bar of this Court)

IN THE SUPREME COURT OF THE UNITED STATES

JANICE HAYES,

Petitioner,

vs.

VALLEY BANK OF NEVADA, et al.,

Respondents.

The Petitioner, Janice Hayes, ("Hayes"), respectfully asks that this Honorable Court take Notice that she has filed a motion in the United States Court of Appeals for the Ninth Circuit asking that that Court correct the clerical mistake in its Memorandum issued June 21, 1982.

A copy of said Motion is appended hereto. Hayes also asks the Court of Appeals to amend or supplement the last paragraph of its Memorandum to reflect that the Court's comment therein was a response to and denial of appellee TYMSHARE's motion for attorney's fees and imposition of sanctions against Hayes.

Hayes also asks the Court of Appeals to enter its ruling on a motion filed August 27, 1982, that the Court correct its clerical mistake in the Memorandum entered in a related case, No. 80-5311, Hayes v. Honorable Justices of the Nevada Supreme Court.

Both cases concern the constitutionality and validity of Nevada Rule of Appellate Procedure 46(b), which prohibited litigation in proper person before the Nevada Supreme Court. Hayes challenged the constitutionality of dismissals made

of her civil appeals of right by the Nevada Supreme Court without any review or consideration of the merits, which dismissals were made pursuant to said Nev. R. of App. P. 46(b) and Nevada Supreme Court Rule 44.

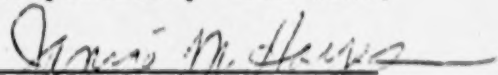
Hayes also moved the Court of Appeals to vacate its Memorandum as that Court did not have jurisdiction inasmuch as the district court's order was not a final judgment, pursuant to 28 U.S.C. 1291, for the reason that the district court did not adjudicate any of Hayes's claims and did not address or rule on the federal questions presented. (The district court did, however, state that Hayes's appeal, Valley Bank v. Hayes, sub nom, Hayes v. Valley Bank, was dismissed by the Nevada Supreme Court pursuant to and because of Nev. R. App. P. 46(b). The Court of Appeals made an opposite finding of fact without explanation, i.e., it determined that Hayes's state court appeal was not dismissed pursuant to Nev. R. of App. P. 46(b), and concluded that Hayes, therefore, had no standing to draw the constitutionality of said Rule into question.)

There is no evidence in the record to support the speculative conclusions and suppositions of the Court of Appeals.

Hayes's Petition for Writ of Certiorari was timely received in this Court on the due date, but said Petition was not acceptable in that the Appendix items were not legible. Hayes has not received either the returned Petition or the Clerk's letter listing deficiencies. Nevertheless, Hayes

has had the entire petition retyped and the appendix items, consisting of judgments of the federal courts and docket entries and orders of the state trial court and Nevada Supreme Court typed and will file forty corrected copies soon as set out in her letter of November 20, 1982 to the Clerk of this Court, a copy of which is appended hereto.

Respectfully submitted,



JANICE M. HAYES, ESQ.

3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135

Petitioner

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANICE HAYES,

Plaintiff-Appellant,

vs.

VALLEY BANK OF NEVADA, et al.,

Defendants-Appellees

CASE NO. 81-5630

D.C.# CV-LV-79-132, REC

MOTION TO CORRECT CLERICAL MISTAKE NUNC PRO TUNC
IN ORDER ENTERED ON JUNE 21, 1982

JANICE HAYES, ESQ.
3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135
Plaintiff-Appellant
Attorney for Plaintiff-Appellant

November 14, 1982

1 IN THE UNITED STATES COURT OF APPEALS
2 FOR THE NINTH CIRCUIT
3

4 JANICE HAYES,

5 Plaintiff-Appellant,

6 vs.

7 VALLEY BANK OF NEVADA, et al.,

8 Defendants-Appellees
9

CASE NO. 81-5630

MOTION TO CORRECT NUNC
PRO TUNC THE CLERICAL
MISTAKE IN MEMORANDUM
ENTERED JUNE 21, 1982
AND TO AMEND LAST
PARAGRAPH OF MEMORANDUM

10 The Plaintiff-Appellant, JANICE HAYES, moves this
11 Honorable Court to correct nunc pro tunc the clerical mistake
12 in its Memorandum entered herein on June 21, 1982, so as to
13 state "Hayes's Nevada appeal was dismissed for failure to file
14 a timely brief rather than because of Nevada Rule of Appellate
15 Procedure 46(b)." instead of "Nevada Supreme Court Rule 46(b)."
16 as the Memorandum presently incorrectly provides.

17 Plaintiff-Appellant also respectfully asks that this
18 Court supplement the final paragraph of said Memorandum to
19 reflect that its comment therein was a response to and denial of
20 Defendant-Appellee TYMSHARE TRANSACTION SERVICES, INC.'s
21 motion for attorney's fees and motion for sanctions, and was not
22 a spontaneous finding by this Court.

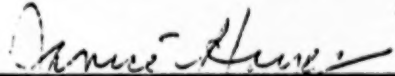
23 This motion is made and based upon the pleadings and
24 papers on file herein and on Federal Rule of Civil Procedure
25 60(a) and the memorandum submitted herewith.

26 This motion is made in good faith and for good cause.
27 The Memorandum judgment of this Court in this action and the
28

1 Memorandum entered in a related case, No. 80-5311, Hayes v.
2 Justices of the Nevada Supreme Court, both contain errors as to
3 the Nevada statutes being challenged. Plaintiff-Appellant has
4 drawn into question the constitutionality and validity of
5 Nevada Rule of Appellate Procedure 46(b) and Nevada Supreme
6 Court Rule 44.

7 Inasmuch as Hayes has filed and will file a Petition
8 For Writ of Certiorari in the United States Supreme Court in
9 both cases, it is important that the Memorandum orders of this
10 Court correctly reflect which rules are being challenged.

11 Respectfully submitted,

12 
13 JANICE HAYES, ESQ.
14 3391 S. El Camino Road
15 Las Vegas, Nevada 89102
16 Telephone: (702) 871-5135
17 Plaintiff-Appellant
18 Attorney for Plaintiff-Appellant

19 POINTS AND AUTHORITIES

20 Plaintiff-Appellant, JANICE HAYES, ("Hayes"), brought
21 the instant action in the federal district court because she
22 was prevented by Nevada Rule of Appellate Procedure 46(b) from
23 litigating his claims in state court.

24 The Nevada Supreme Court had dismissed Hayes's civil
25 appeal of right because she was then a layp son, a law student,
26 and could not comply with the provisions of Nevada Rule of
27 Appellate Procedure 46(b). The court, without ruling on her
28 motion for leave to appear in proper person and to file the

1 Opening Brief in proper person, sua sponte, without notice to
2 Hayes or warning that her appeal of right was subject to dis-
3 missal, dismissed the appeal because she had not filed the
4 Opening Brief.

5 Nevada Rule of Appellate Procedure 46(b), prior to its
6 1981 amendment, provided that:

7 "No person, except a habeas corpus petitioner,
8 may appear in proper person before the Supreme
9 Court."

10 A copy of said Rule is appended hereto as Exhibit 1.
11 A copy of (Nevada) Supreme Court Rule 44 is appended hereto as
12 Exhibit 2.

13 This court apparently, in this case and in 80-5311,
14 supra, confused these rules with Supreme Court Rule 46(b) and
15 N.R.A.P. 44. The Rules of Appellate Procedure and Rules of the
16 Nevada Supreme Court are two separate, distinct sets of rules.

17 (Nevada) Supreme Court Rule 46(b) and N.R.A.P. 44 are
18 NOT at issue in this case or in Case No. 80-5311 (Justices), nor
19 has Hayes challenged said rules.

20 Hayes, therefore, requests that this Court correct its
21 Memorandum so that the first sentence of the second paragraph
22 reads as follows:

23 "Hayes's Nevada appeal was dismissed for failure
24 to file a timely brief rather than because of
25 Nevada Rule of Appellate Procedure 46(b)."

26 II THE COMMENT REGARDING ALLEGED VEXATIOUS MOTIONS

27 Hayes also asks the Court to supplement the last
28 paragraph of its Memorandum to reflect that this court's comment

1 that "Although we decline to award sanctions in the instant
2 appeal, we acknowledge a basis for the district court's
3 conclusion that some of Hayes's actions border on being
4 vexatious," was in response to and served as a denial of
5 defendant-appellee TYMSHARE TRANSACTION SERVICES, INC.'s motions
6 for attorney's fees and award of sanctions, and that TYMSHARE
7 had requested a ruling on its motions.

8 Hayes also asks the Court to note that the district court
9 referred only to one motion brought by Hayes, which motion was
10 meritorious. Hayes had moved the district court to strike a
11 Reply Memorandum of Points and Authorities filed by defendant
12 VALLEY BANK, for the valid reason that said memorandum was filed
13 thirty-three days late, in violation of Local Rules and to
14 Hayes's disadvantage. Valley Bank offered no excuse or justi-
15 fication for said late filing, nor did it seek leave to file its
16 tardy memorandum.

17 The district court, without considering the merits of
18 Hayes's motion, denied it because of the court's mistaken im-
19 pression that Hayes had allegedly not complied with an order
20 regarding service of the defendants. Hayes had timely delivered
21 sufficient copies of the Summons and Complaint with instructions
22 to serve all defendants to the United States Marshal. (She was
23 at that time proceeding in proper person.)

24 Hayes respectfully suggests that this court, rather than
25 concluding that Hayes's motion was vexatious, should have
26 considered whether the district court acted improperly in
27 refusing to decide a motion on its merits for the perceived
28 reason that Hayes had not complied with an unrelated order.

1 For the reasons set forth above, Hayes asks that this
2 Court correct its clerical error regarding Nevada Rule of
3 Appellate Procedure nunc pro tunc, and that the Court additionally
4 supplement the last paragraph of its Memorandum.

5 Hayes also asks that this Court issue an order correcting
6 its Memorandum in Case No. 80-5311. Her Motion for Correction
7 was filed as of August 27, 1982, two and a half months ago.

8 Respectfully submitted,

9 Janice M. Hayes
10 JANICE M. HAYES, ESQ.
11 3391 S. El Camino Road
12 Las Vegas, Nevada 89102
13 Telephone: (702) 871-5135
14 Attorney for Plaintiff-Appellant
15 Plaintiff-Appellant
16
17
18
19
20
21
22
23
24
25
26
27
28

DEC 1 1981

IN THE SUPREME COURT OF THE
STATE OF NEVADA

IN THE MATTER OF THE AMENDMENT OF THE NEVADA RULES OF
APPELLATE PROCEDURE, RULE 46 RELATING TO THE PRACTICE
OF LAW BEFORE THE SUPREME COURT.

ORDER AMENDING RULE 46(b), NEVADA RULES
OF APPELLATE PROCEDURE

IT IS HEREBY ORDERED that Rule 46(b) of the Nevada Rules of Appel-
late Procedure be, and the same hereby is, amended as follows:

(b) Appearances in Proper Person. [No party, except a habeas
corpus petitioner, may appear in proper person before the Supreme
Court.] *With leave of the Supreme Court, a party may file, in proper
person, written briefs and papers submitted in accordance with these
rules.*

IT IS HEREBY FURTHER ORDERED that this order shall become effective
sixty (60) days after its entry. Publication of this order shall be made by
the mailing of a copy by the clerk of this Court to each member of the
State Bar of Nevada according to the clerk's official list of membership of
such bar (which will include all district judges and district attorneys), and
the certificate of the clerk of this Court as to the accomplishment of such
mailing shall be conclusive evidence of the adoption and publication of
the foregoing amended Rule, in accordance with the provisions of Nevada
Revised Statute 2.120.

Dated this 22nd day of October, 1981.

BY THE COURT

E. M. GUNDERSON, *Chief Justice*

NOEL E. MANOUXIAN
Associate Justice

CAMERON M. BATTIER
Associate Justice

CHARLES E. SPRINGER
Associate Justice

JOHN MOWBRAY
Associate Justice

EXHIBIT 1

Clark County Law Library

endorsed upon the pleading so filed, and service upon such attorney shall be deemed to be service upon the attorney filing the pleading or other paper.

5. Except as provided in subsections 1, 2 and 3 of this rule, an attorney admitted to practice in another jurisdiction shall not be admitted to practice law in the State of Nevada by motion or on the basis of reciprocity. Attorney applicants must make application for admission and be examined in accordance with Rules 49 to 75, inclusive, in the same manner as all other applicants.

[As amended; effective December 20, 1973.]

Rule 43. Appearance of attorneys employed by or representing United States Government; affidavits.

1. Attorneys employed by or representing the United States Government, in matters before the courts of this state in which the United States has a direct interest, shall be permitted by the courts of this state to appear on behalf of the United States Government and to represent the interests thereof in any litigation in which the United States Government is interested.

2. At the time of appearing in any such suit on behalf of the United States Government, such attorney shall file with the clerk of the court, if there is one, and if there is not one, then with the judge or justice of such court, an affidavit to the effect that the United States Government is interested in the matter before the court in which such appearance is being entered, that such person represents the United States Government and that his appearance is made in performance of his duties as such representative of the United States Government and is made in pursuance of this rule.

Rule 44. Person may appear in his own behalf. Nothing in these rules shall be so construed as to prevent any person from appearing in his own behalf in any court in this state except the supreme court.

Rule 45. Authority of attorney. An attorney and counselor shall have authority:

1. To bind his client in procedural matters in any of the steps of an action or proceeding.

2. To receive money claimed by his client in an action or proceeding during the pendency thereof, or within 1 year after judgment and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction in the judgment.

Rule 46. Withdrawal or change of attorney. The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon consent of the attorney, approved by the client.

2. Upon the order of the court or judge thereof on the application of the attorney or the client.

1 IN THE UNITED STATES COURT OF APPEALS
2 FOR THE NINTH CIRCUIT
3

4 JANICE HAYES,

5 Plaintiff-Appellant,

6 v.

7 VALLEY BANK OF NEVADA, et al.,

8 Defendants-Appellees.
9

CASE NO. CA 81-5630

DECLARATION

10 COMES NOW the plaintiff-appellant, JANICE HAYES, and
11 under the penalties of perjury, states that:

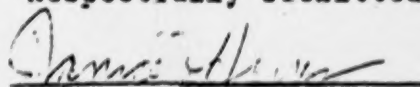
12 1. She is an attorney and member of the Bar of this
13 Court and is representing herself in this action.

14 2. This motion is made in good faith, for good cause and
15 not for any purpose of delay.

16 3. Hayes asks this Court to correct the error in its
17 Memorandum entered June 21, 1982 in this action, wherein the
18 Court erroneously referred to "Nevada Supreme Court Rule 46(b),"
19 and whereas the correct reference should be to "Nevada Rule of
20 Appellate Procedure 46(b)."

21 4. Hayes intends to seek a Petition for Writ of Certior-
22 ari and said petition was timely filed on October 18, 1982. She
23 wishes to have the Memorandum corrected for the Supreme Court's
24 review.

25 Respectfully submitted,

26 

27 JANICE HAYES, ESQ.
28 3391 S. El Camino Road
Las Vegas, Nevada 89102
Plaintiff-Appellant
Attorney for plaintiff-
Appellant

1 IN THE UNITED STATES COURT OF APPEALS
2 FOR THE NINTH CIRCUIT
3

4 JANICE HAZES,

5 Plaintiff-Appellant,

6 vs.

7 VALLEY BANK OF NEVADA, et al.,

8 Defendants-Appellees.
9

CASE NO. 81-5630

PROPOSED ORDER

10
11 For good cause shown and it appearing to the Court that
12 the clerical error in the Memorandum entered June 21, 1982,
13 should be corrected nunc pro tunc,

14 IT IS ORDERED that the first sentence of the second
15 paragraph of said Memorandum be corrected to provide as follows:

16 "Hayes's Nevada appeal was dismissed for failure to
17 file a timely brief rather than because of Nevada
18 Rule of Appellate Procedure 46(b)."

19 IT IS FURTHER ORDERED that the last paragraph be amended
20 and supplemented to reflect that the last paragraph of the
21 Memorandum was a reference to and denial of TYMSHARE TRANSACTION
22 SERVICES, INC.'s motions for attorney's fees and for sanctions.

23 DATED this _____ day of _____, 1982

24 _____
CIRCUIT JUDGE

25 _____
CIRCUIT JUDGE

26 _____
CIRCUIT JUDGE
27
28

JANICE M. HAYES
ATTORNEY AT LAW

3391 S. EL CAMINO ROAD
LAS VEGAS, NEVADA 89102

(702) 871-5135

November 20, 1982

The Honorable Alexander Stevas
Clerk of the Court
United States Supreme Court
Washington, D.C. 20543

Re: Janice Hayes v. Valley Bank of Nevada, et al.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

- (1) Notice of filing of Motion in the Court of Appeals for correction of clerical mistake in its memorandum, to be distributed to Justices of this Court.
- (2) I have never received the original (ribbon) copy of my Petition for Certiorari, nor letter from Clerk, which Clerk stated was mailed to me.
- (3) I have not received copy of Brief in Opposition in Opposition allegedly filed on behalf of appellees, Justices of the Nevada Supreme Court.
- (4) Request that Petition not be distributed to Court until the forty corrected copies of Petition are received and I have opportunity to file Reply to Brief in Opposition.

Dear Mr. Stevas,

Please find enclosed the original and ten copies of NOTICE OF FILING MOTION FOR CORRECTION OF CLERICAL ERROR IN MEMORANDUM NUNC PRO TUNC. Said motion was filed in the Ninth Circuit Court of Appeals.

Please distribute a copy to each Justice and return one copy to me in the enclosed, stamped, self-addressed envelope.

My Petition for Writ of Certiorari was timely received by this Court on October 18, 1982. I have been informed several times in telephone conversations with Mr. Slade and other members of your staff that the Petition had to be redone, it that the Appendix items were not legible and the pages were uneven. I was advised that it would be returned to me along with a letter detailing corrections to be made.

On various occasions, I have been told that the original was mailed on October 19, October 20 and October 29. I still have not received it. I wanted the original so that new copies could be run from the ribbon copy. I also wanted to know about all corrections that needed to be made.

November 20, 1982

I have written several letters to you and Mr. Slade, but have received no response.

I have, therefore, had the pages retyped and had all of the appendix pages typed out. The forty copies should arrive in your office very soon. I did not know if all of the Appendix items were so illegible that they needed to be typed out.

(3) I received today letters from two counsel which were identical in content. Each attorney stated that he is "aware of the contents and arguments made in the Brief in Opposition. . . submitted by the Nevada Attorney General's Office, counsel for respondents State of Nevada and (Nevada Supreme Court Justices.).

Please be advised that I have not received any Brief in Opposition to my Petition for Certiorari.

(4) I intend to file a reply to said Brief when I receive a copy.

I request, therefore, that you do not distribute the Petition or Brief in Opposition until I have received the Brief and have had an opportunity to respond.

As my Notice states, I have requested the Court of Appeals to correct the clerical error in its Memorandum and to amend its Memorandum to reflect that the comment in its last paragraph was made in response to and denial of TYMSHARE's motion for attorney's fees and imposition of sanctions.

I have also filed a similar motion, on August 27, 1982, that the Court of Appeals correct its clerical error in the Memorandum entered in Case No. 80-5311, Hayes v. Honorable Justices of the Nevada Supreme Court. No ruling has been entered on said motion.

I will file a Petition for Certiorari in Case No. 80-5311, supra, on December 10, 1982. In both cases, the Court of Appeal's Memorandum incorrectly stated the Rule number of the Nevada Rules which I am challenging, which are Nevada Rule of Appellate Procedure 46(b) and (Nevada) Supreme Court Rule 44.

I have also filed a Motion that the Court of Appeals vacate its judgment and dismiss both of these cases for want of jurisdiction in that in each case the Court improvidently heard an appeal which was not taken from an appealable Order of the district court. If said motions are granted, the petitions for certiorari to this court would be unnecessary.

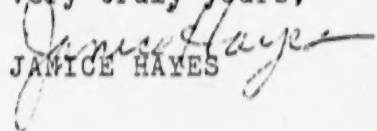
page 3
Alexander Stevas

November 20, 1982

Any delay in distributing the Petition in this action would, therefore, be advantageous to all of the parties and especially to the Court.

Your assistance in not distributing the Petition until I have received and responded to the Brief in Opposition would be greatly appreciated.

Very truly yours,


JANICE HAYES

cc: All counsel of record and to Attorney General Richard Bryan

Enc: Copies of Notice of filing motion in Court of Appeals, to be distributed to the Court.

Copy of letter from counsel for respondent Valley Bank, which indicates that Brief in Opposition was filed in this Court, of which Brief I have not received a copy.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1982

JANICE HAYES,

Petitioner,

vs.

VALLEY BANK OF NEVADA, et al.,

Respondents.

AFFIDAVIT OF SERVICE

STATE OF NEVADA)

COUNTY OF CLARK) ss:

I, JANICE HAYES, being first duly sworn, depose and say that I am the Petitioner in this action; that I a member of the Bar of Nevada; that I have not been an attorney for a sufficient length of time to be admitted to the Bar of this Court; that I am appearing on my own behalf in proper person; that I served the NOTICE OF MOTION FILED IN UNITED STATES COURT OF APPEAL FOR CORRECTION OF CLERICAL MISTAKE NUNC PRO TUNC by mailing true copies thereof in sealed envelopes, postage thereon prepaid, addressed to counsel for the Respondents as follows: on the 2nd day of November, 1982:

Lorin Parraguirre, Esq.
302 E. Carson Ave., Suite 1104
Las Vegas, Nevada 89101

John C. Whelton, Esq.
411 So. Sixth St.
Las Vegas, Nevada 89101

/ / /

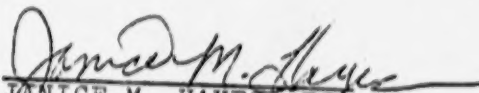
Mark A. Solomon, Esq.
1700 Valley Bank Plaza
300 S. Fourth St.
Las Vegas, Nevada 89101

Corby Arnold, Esq.
302 E. Carson Ave., Suite 1000
Las Vegas, Nevada 89101

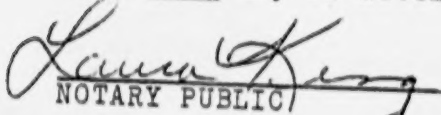
Kenneth G. Freitas, Esq.
302 E. Carson Ave., Suite 703

Deputy Attorney General William Isaef
Heroes Memorial Building
Carson City, Nevada 89710

All parties required to be served have been served.


JANICE M. HAYES, Esq.
3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135
Petitioner

Subscribed and Sworn to before me
this 22nd day of November, 1982


NOTARY PUBLIC

